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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,059	10/08/2003	Dave DeWaard	P114153	6499

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Michael F. Hughes  
Hughes Law Firm, PLLC  
Pacific Meridian Plaza, Suite 302  
4164 Meridian Street  
Bellingham, WA 98226-5583

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/682,059

Applicant(s)

DEWAARD, DAVE

Examiner

Kimberly S Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/08/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/3/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because Figure 6, reference numbers 28 and 24 should be “28a” and “24a” respectively. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “34” has been used to designate both a longitudinal axis in Figures 7 and 8 and an internal conduit in Figure 5; “36” has been used to designate both a transverse direction in Figure 7 and a longitudinal direction in Figure 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing

Art Unit: 3644

on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The disclosure is objected to because of the following informalities: page 4, line 21: replace "15" with - -50- -; page 5, lines 1-2: replace "milk channel" with - -cleaning fluid channel- -; page 6, line 25: replace "66" with - -46- -; page 9, lines 24-25 should be addressed for clarity; page 10, line 5: replace "formed" with - -form- -; page 10, line 15: replace "cleaning fluid" with - -milk- -; page 10, lines 18-27 should be addressed for grammatical clarity. Appropriate correction is required.
4. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
5. Claim 32 is objected to because of the following informalities: insert commas at the ends of lines 11 and 18. Appropriate correction is required.

### *Claim Objections*

6. Claim 1 is objected to because of the following informalities: line 10: insert - -and- - prior to "a cleaning" and replace the comma at the end of the line with a semi-colon. Appropriate correction is required.

Art Unit: 3644

7. Claims 1-31 are objected to because of the following informalities: line 1, the first instance of the word “claim” should be replaced with - -valve assembly- - as the applicant is claiming a valve assembly, not a claim structure. Appropriate correction is required.
8. Claims 33 and 37-39 are objected to because of the following informalities: line 1, the first instance of the word “claim” should be replaced with - -method- - as the applicant is claiming a method, not a claim structure. Appropriate correction is required.
9. Claims 2 and 20 are objected to because of the following informalities: insert - -the- - prior to “actuator” in line 2. Appropriate correction is required.
10. Claims 7 and 24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 7 and 24 are directed to a method claim and therefore do not further limit the apparatus.
11. Claims 9 and 25 are objected to because of the following informalities: the claims state that the cleaning fluid exits to atmospheric. However, atmospheric is an adjective and therefore does not provide a proper exit location limitation. Appropriate correction is required.
12. Claims 17 and 30 are objected to because of the following informalities: these claims should be addressed for grammatical clarity. It is suggested either “from” be replaced with - - between- - or “and” in line 3 be replaced with - -to- - or similar alterations. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 3 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what is being claimed. The claims should be amended to conform to proper grammatical practice and to clearly state what the claimed limitation is regarding.

15. Claims 32-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 32 is a method of cleaning an under, however, line 5 states "said valve assembly comprising" and then further limits the claim with method steps. The rejection would be obviated by replacing "valve assembly" with - -method- -.

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 1, 4, 6-9, 11-19 and 23-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Pereira et al., US Patent 5,850,845 (Pereira).

Art Unit: 3644

Pereira discloses *inter alia* a valve assembly and an inherent method of use having a relieve slot (56), a first milk passage (24) a second milk passage (28), a cleaning fluid passage (22), a first transverse slide (16), a milk channel (32) and a cleaning fluid channel (38), an actuator portion (6)

***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 2, 3, 5, 10 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira et al., US Patent 5,850,845 (Pereira).

Regarding claims 2 and 20, Pereira discloses the invention substantially as claimed. However, Pereira does not disclose the cleaning fluid passage being positioned between the actuator and the first milk passage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the actuator so as to have the cleaning fluid passage positioned between the actuator and the first milk passage, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claims 5, 10 and 22, Pereira discloses the invention substantially as claimed. However, Pereira does not disclose the relief slot being located on the housing section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

Art Unit: 3644

place the relief slot on the housing section, since it has been held that rearranging the parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bucker (US 5,492,090), Souza et al. (US 4,175,514).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**TERI P. LUU  
SUPERVISORY PRIMARY EXAMINER**